

Article Reprint

Copyright Issues When Using Music in Videos

By Barry S. Britt

Do you remember many years ago when trying to produce a video for your school took several thousand dollars worth of elaborate and bulky video equipment to make it happen? Now here we are in 2008, and with a very inexpensive digital video camera and some free software, you, yes even you can produce, publish and broadcast your video around the world – how exciting! And yet, how scary.

I've attended many conferences and workshops where attendees learn to use the latest and greatest technology and are encouraged to incorporate their favorite songs in videos to make their production more captivating. After all, every great video needs music, and any that do not use audio for enhancement lack in professional quality.

And this is the scary part – when a teacher or student uses a chosen piece of popular music in his or her video. In some cases based on hear-say, we as educators instruct them to use only 30 seconds or less of copyrighted music material so as not to infringe on copyright, and this is an issue.

What are the problems?

#1. Background music is not viewed as educational use.

Just because you're producing a video at your school does not mean that the copyrighted music content is for educational purposes. It is ancillary. In following the Fair Use Guidelines, music that is applicable to education would be that which is directly related to your course content. For example, if you are studying classical music and want to use Mozart's "Sonata in A Major" as an example for your students, then this is considered educational use. Or, if you're studying the politics of the 60's, and want to share how rock music reflected the times through poetry, then you may use a portion of the Beatles "Revolution" to educate your students. Both of these examples demonstrate educational and relevant uses of music. (The key word here is "relevant").

#2. Posting a video to a network or public website which incorporates copyrighted music for which you do not have written permission to use is a violation.

Simply put, when using copyrighted music for the educational purposes stated above, it should be done on a secured network. Once you publish the video on your school website or some other public video site or unsecured network, a copyright infringement has occurred.

#3. Legally purchased music is for personal and home use.

You may hear an argument from your teachers and students that they did not illegally download the music but purchased the music legally from i-Tunes or some other legal music e-tailer, and, should be able to use in their school-produced video.

Actually, their legal music purchase is for personal and home use, and an entirely new set of rules apply for education, such as those stated in the above paragraphs.

What are the solutions?

Make your students and staff aware of the potential infringements. Most teachers and students use music in their video and then publish or use it in a public setting while thinking they've done nothing wrong. But, their lack of knowledge about the laws does not make them immune.

Request permission. It's not a guarantee that you'll get the written permission you need, but go to the copyright holder(s) or publishers of the music to request written permission to use, especially if you think the song in question is that necessary for your production.

IMPORTANT NOTE: Don't base your permission on that given by the artist or composer unless they are the sole owner of the copyrighted music. (Crediting the artist does you no good). You can almost bet that any popular piece of music is not owned by the artist but possibly by many, such as producers, publishers, attorneys and many others. This can be a problem, because you need permission from all parties.

Purchase a royalty free music library. This is a great insurance policy for your site and system, ensuring compliance and demonstrating due diligence. Also, royalty free music is way "cooler" than it used to be, and many students and teachers can find the music of their choice which best suits their video content.

Not all royalty free music libraries license specifically for K-12 and university use, so be sure to check their licensing closely. For use in education, you should make sure the royalty free music library allows for:

- Synchronization with film and video

- Broadcast and podcast rights

- Rights to duplicate and sell videos within the educational environment

- Continued use for student portfolios. In this, a student can produce a video project and remain the sole owner for repeated use. If they ever want to use the project to promote their experience, further their education, or even to start a career, they should be able to do so according to the proper music license.

Many may say that there have been no copyright lawsuits against schools or districts for this type of use. Contrary to popular belief, there have been lawsuits, but they do get settled out of court. Regardless of the possibility of "getting away with it," it is our responsibility to teach students legal and ethical practices when using technology in this digital age. And, as students begin to create their own works, they will understand the importance of ownership, especially as they seek credit and payment for their own creations. If we fail to teach this now, then we have done them a disservice.

Barry S. Britt is a creative and executive producer of music for film and video. As an ASCAP member, he has been educating educators on digital copyright awareness since 1996.